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ABSTRACT

This position paper of the Academic Senate for California Community Colleges examines practical issues in the area of technology in education and provides a sample of possible policy and contract language. It discusses details of technology implementation in both the academic and the collective bargaining setting. It concentrates on faculty issues and viewpoints, although several of the topics examined have parallel implications for students. Individual institutions will decide on a case-by-case basis which issues belong in an academic policy setting and which belong in contract language. The first section examines general instructional policy issues in technology and includes definitions and instructional technology decisions. These include academic freedom and use policies, faculty and curriculum standards, support, and access issues. The second section examines issues of intellectual property and various compensation options. The third section examines issues of workload, including class size and preparation. These discussions focus on faculty and institutional needs rather than on individual student needs. Specific recommendations for involvement and action of local academic senates are included, as well as suggestions to faculty in general. (Contains 105 references.) (Author/JA)

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Technology in Education: A Summary of Practical Policy and Workload Language

The Academic Senate for California Community Colleges

Adopted Spring 2000

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ABSTRACT

This position paper of the Academic Senate for California Community Colleges examines practical issues in the area of technology in education and provides a sample of possible policy and contract language. It is the fourth in a recent series of related papers that have addressed academic freedom in a more general setting, instructor-student contact in distance education, and foundations of privacy and copyright in a technological world. This paper discusses details of technology implementation in both the academic and the collective bargaining setting. It concentrates on faculty issues and viewpoints, although several of the topics examined has parallel implications for students. Individual institutions will decide on a case-by-case basis which issues belong in an academic policy setting and which belong in contract language.

The first section examines general instructional policy issues in technology and includes definitions and instructional technology decisions. These include academic freedom and use policies, faculty and curriculum standards, support, and access issues. The second section examines issues of intellectual property and various compensation options. The third section examines issues of workload, including class size and preparation. These discussions focus on faculty and institutional needs rather than on individual student needs.

Specific recommendations for involvement and action of local academic senates are included, as well as suggestions to faculty in general. The paper also provides an annotated bibliography of currently available reference material and of materials used in the earlier papers in the series.

INTRODUCTION

For many years, the Academic Senate for California Community Colleges has played a leading role in the successful development and introduction of technology within the curriculum. The increasing use of technology in teaching has resulted in significant changes in the ways that faculty and students work and interact. E-mail has become a routine means of scholarly communication, while websites and the Internet have become major vehicles for research, dissemination and delivery of course material. Students have participated in these changes through online learning, technology mediated instruction, use of multimedia, e-mail, and other Internet activities.

The Academic Senate has helped to shape this change with a series of position papers on academic freedom, curriculum implications and pedagogical issues involved in technology and distance learning:

> Fall 1993, "*Distance Education in the California Community Colleges: An Academic Senate Review of the Social, Fiscal and Educational Issues*,"
>
> Fall 1995, "*Curriculum Committee Review of Distance Learning Courses and Sections*,"
>
> Fall 1997, "*Guidelines for Good Practice: Technology Mediated Instruction*,"
>
> Spring 1998, "*Academic Freedom and Tenure: A Faculty Perspective*,"
>
> Spring 1999, "*Guidelines for Good Practice: Effective Instructor-Student Contact in Distance Learning*,"
>
> Fall 1999, "*Academic Freedom, Privacy, Copyright and Fair Use in a Technological World*."

The most recent (Fall 1999) paper, "*Academic Freedom, Privacy, Copyright and Fair Use in a Technological World*," established the philosophical foundations necessary for campus discussion of academic freedom and intellectual property issues by faculty involved in technology mediated and distance instruction. The Fall 1997 and Spring 1999 papers examined primarily pedagogical and curriculum issues related to technology in the classroom and in distance education. The Spring 1998 paper examined the traditional setting of academic freedom and more recent developments.

This paper examines the more immediate, practical aspects of these same issues of privacy and intellectual property but also includes implications for faculty workload and compensation. Satisfactory resolution of these practical concerns often requires a mixture of policy language and collective bargaining contract language. For this reason, representatives of statewide collective bargaining groups have been included in the development of this paper. Sample language is

included in many areas, but individual institutions will decide whether the implementation of these ideas belongs in policy or contract language. The content of this paper was guided by the following two resolutions of the Academic Senate Plenary Body and by additional discussion at breakout sessions in 1998 and 1999.

S98 11.01 Internet-based Instruction

Whereas faculty are increasingly involved in development and use of electronic material, and

Whereas expansion of Internet-based instruction and communication via e-mail has created new venues for the use of such electronic material, and

Whereas protection of faculty rights to their own materials and the fair use of materials developed by others has both academic and workload implications,

Therefore be it resolved that the Academic Senate for Community Colleges, in conjunction with faculty union leadership, develop and disseminate a position paper on intellectual property rights, privacy rights, and copyright as they apply to electronic media, especially e-mail, multimedia, and use of the Internet.

11.01 S99 Effective Instructor-Student Contact in Distance Learning

Whereas there are issues related to distance learning that are properly the purview of collective bargaining and some areas that are relevant to pedagogy and academic and professional issues,

Therefore be it resolved that the Academic Senate for Community Colleges direct the Executive Committee to develop a paper, in collaboration with our collective bargaining colleagues, covering such areas as faculty load, class size, compensation and related issues, with regard to distance learning and teaching.

The viewpoint of this paper is defined by faculty and instructional needs although many of the issues are reflected in corresponding student needs. These areas will be identified but deserve a more comprehensive treatment in possible future papers. Many of the items examined in this paper will have impact on both academic and professional policies that are the purview of the local academic senate and working conditions that are the purview of the local collective bargaining agent. Their precise resolution will depend on local agreements between the two groups and could result in college policy language or contract language, or both. Some of the examples used in this paper already exist in local collective bargaining agreements, but many are only in the proposal stage. Both types of examples should provide useful background to local academic senate leaders and collective bargaining negotiators. Many of the source documents are of considerable length and should be consulted for additional details.

In general, the goal of such contract or policy language should be to promote innovative and effective approaches to the use of technology in instruction. These approaches should be motivated by instructional and pedagogical planning and should enhance the student learning experience. Policy and contract language should balance instructor and institutional legal rights with incentives to produce and distribute high quality course material and instructional practices.

GENERAL INSTRUCTIONAL POLICY ISSUES INCLUDING ACADEMIC FREEDOM, ACCESS AND PRIVACY

The fundamental starting point for institutional policies and contract language should be to ensure that instructional technology decisions are made in an academic and professional manner utilizing collegial consultation or collective bargaining where appropriate. The college educational master plan should clearly delineate the role of an instructional technology plan and this, in turn, should lead to specific technology planning and funding. Local academic senates should consult collegially on these plans and the process for developing them, as part of their responsibility for development of educational programs, institutional planning and budget processes. Local academic senates should also work with the local collective bargaining agents to identify whether specific issues should be resolved in policy language or in contract language.

This section will consider the following issues:

- $ Definitions of Technology Mediated Instruction and Distance Learning
- $ Instructional Technology Decisions
- $ Computer/Electronic Use Policies and E-mail Privacy
- $ Instructor Hiring and Assignment to Courses
- $ Selection of Course Materials and Textbooks
- $ Equipment and Support Services for Faculty
- $ Instructional Quality Standards - Curriculum and Contact
- $ Access Issues
- $ Library Technology
- $ Counseling Technology

Definitions of Technology Mediated Instruction and Distance Learning

Many institutions begin their work on these issues with definitions of technology mediated instruction and of distance learning, which serve to clarify their consideration of the issues under discussion.

For example Napa Valley College included the following definitions at the beginning of their May 1999 draft position paper, "Proposal on Technology Mediated Instruction":

$ Technology Mediated Instruction (TMI) is the use of technological devices to assist in the teaching and learning process.

$ Distance Learning, a subset of TMI, is the use of technological devices to bring the teaching and learning process to students who are at a different location(s) and/or are at a different time(s) from the instructor.

$ TMI may be implemented at two levels:

> Primary TMI, in which on-campus or distance-learning courses or labs use technology as the dominant mode of instruction; at this level, TMI will comprise 50 percent or more of class instruction.
>
> Partial TMI, in which on-campus or distance-learning courses or labs use technology as a periodic mode of instruction; at this level, TMI will comprise less than 50 percent of class instruction.

Notice that technology mediated instruction can involve different levels and amounts of technology, but that Title 5 curriculum requirements apply in all cases. Title 5 ' 55370 defines distance education as:

> Instruction in which the instructor and student are separated by distance and interact through the assistance of communication technology.

"Guidelines for Negotiating Distance Education Issues" - a collection of contract language compiled by Tom Tyner, President of the California College Council/California Federation of Teachers (CCC/CFT), builds on this definition as follows:

> Distance education is instruction in which the instructor and students are separated and interact through the assistance of communication technology. Distance education may include two-way interactive, online courses, or telecourses.

For a more comprehensive discussion of the political context of the growth in distance education see the "Report on Distance Learning" issued by Committee R of the American Association of University Professors (AAUP) and published in the May-June 1998 issue of AAUP's Journal, *Academe*. This report also contains a thoughtful analysis of the benefits of distance education plus useful definitions and discussion. It is based on three fundamental assumptions:

> Distance learning is not a future possibility for which higher education must prepare; it is a current reality whose growth potential is virtually unlimited.

> Distance learning, used properly in its various modes, can enhance the learning experience and increase access to higher education for a wide variety of potential students.
>
> Distance learning, even used properly in its various modes, raises a number of issues that have to be examined carefully, to determine its impact on faculty, students, and the learning experience in general.

In December 1999, the same AAUP committee produced suggestions and guidelines with sample language for institutional policies and contracts governing two areas: ownership of intellectual property and distance education.

Instructional Technology Decisions

A fundamental Academic Senate position is that instructional technology decisions should originate in educational and instructional planning activities that determine how technology can best enhance the student learning experience. They should not be made in a vacuum, nor in a manner where technology is dictating instructional decisions.

In the draft, "Framework for Contract Negotiations Related to Instructional Technology Issues," produced by the California Federation of Teachers, a joint subcommittee on the impact of technology is recommended. Part of its charge should be to assure that:

> $ The institution's faculty assumes responsibility for and exercises oversight over distance education, ensuring both the rigor of programs and the quality of instruction,
>
> $ The institution ensures that the technology used is appropriate to the nature and objectives of the programs, and
>
> $ The academic department ensures the currency of materials, program and courses.

Computer/Electronic Use Policies and E-mail Privacy

This section presents some specific policy or contract language to address concerns of the Academic Senate. For a more comprehensive analysis and discussion of issues in this area, see the Academic Senate's Fall 1999 paper, "*Academic Freedom, Privacy, Copyright and Fair Use in a Technological World.*" In this fast evolving area legal requirements are often not clear and much of the case law relates specifically to private industry. The Academic Senate believes that despite a lack of technological guarantees, a higher standard of access and privacy should be expected in the higher education arena and that the faculty can benefit from strong statements of principle in both policy and contract language.

The traditional background for academic freedom is based on the AAUP report "1940 Statement of Principles on Academic Freedom and Tenure." A much more recent AAUP report, "Academic Freedom and Electronic Communications," provides an excellent framework for the corresponding discussion in light of current technology.

Particularly relevant is the report's statement that:

> freedom of expression and academic freedom should be limited to no greater degree in electronic format than in printed or oral communication, unless and to the degree that unique conditions of the new media warrant different treatment.

In "*Academic Freedom, Privacy, Copyright and Fair Use in a Technological World*," the Academic Senate made the following recommendations to local academic senates regarding language that should be included in college policies or contracts:

> Since there is so much concern in the area of academic freedom and privacy and so many examples of strong and weak policy language, it is recommended that local academic senates play a major role when developing policies and procedures:
>
> > $ To ensure that local electronic/computer use policies include a statement of the fundamental principle of academic freedom in the electronic medium, including e-mail, websites and online courses,
> >
> > $ To ensure that local electronic/computer use policies include a statement of the fundamental principle of the confidentiality of e-mail communications, while acknowledging the inherent lack of absolute security,
> >
> > $ To actively involve each local academic senate in creating and implementing the process that deals with possible exceptions or violations of academic freedom and privacy, and
> >
> > $ To consult with collective bargaining colleagues to ensure contract language creating and implementing the process that deals with confidentiality and with possible exceptions and technical safeguards or limitations.

Appropriate language could be as simple as the following excerpt from Bowen's 1999 Senate Bill 1016 which passed the Legislature but was vetoed by the Governor:

> An employer may not secretly monitor the electronic mail or other personal computer records generated by an employee.

The University of California "Electronic Mail Policy" contains the following exemplary language:

> The University recognizes that principles of academic freedom and shared governance, freedom of speech, and privacy of information hold important implications for electronic mail and electronic mail services. The University affords electronic mail privacy protections comparable to that which it traditionally affords paper mail and telephone communications.

The Board of Trustees at Palomar College passed a resolution in 1998 that included the following language:

> It is the policy of the District not to monitor electronic transmissions for content except when required to do so in the normal course of business, in a criminal investigation, in response to a lawfully issued subpoena or valid court order, or when specific written permission to do so is granted by the Superintendent/President.

It is important to realize that as policy emerges in this area, groups other than the Academic Senate are making considerably different policy recommendations. *Legal Issues and Education Technology* presents many of these issues from the perspective of K-12 school district attorneys and includes positions and much proposed language that the Academic Senate would oppose. Such positions include the ideas that use of technology is a privilege, that student e-mail should never be considered private and that school officials will search data or e-mail at any time for any reason.

There are also many sources that portray the issues from the perspective of the private sector business community. One such is the 1995 book, *Netlaw*, by computer law attorney Lance Rose.

Neither of the above two references reflects positions that are supported by the Academic Senate, but both present interesting and contrasting points of view. It can be very helpful to be aware of such proposals.

Notice also that computer use and e-mail policies are areas where related language may be needed in the college's student code of conduct and student computer use policy.

Instructor Hiring and Assignment to Courses

Instructor hiring in technology areas should follow the regular college process. Education Code ' 87360 (b) requires that this faculty hiring process be developed and agreed upon jointly by representatives of the governing board and the academic senate. The assignment of instructors to technology mediated or distance education classes should also follow the existing college process and should ensure adequate training. Contract language may cover course assignment.

AAUP, in its "Statement on Distance Education," suggests that:

> no member of the faculty should be required to participate in distance education courses or programs without adequate preparation and training, and without prior approval of such courses and programs by the appropriate faculty body.

Related to this is the concept of faculty job protection in the implementation of distance education programs. Sample contract language for this appears in Tom Tyner's, "Guidelines for Negotiating Distance Education Issues":

> $ A regular on-campus class will not be canceled for the purpose or with the effect of transferring or directing students into a distance learning class.
>
> $ No faculty employee shall be laid off as a result of the offering of distance education courses in the district.
>
> $ Distance education courses will be used to supplement rather than to replace course sections taught on the district's campuses.
>
> $ In offering distance education courses, it is not the purpose of the district to eliminate any faculty positions or to reduce the number of course offerings the district provides.

Selection of Course Materials and Textbooks

This area is an academic freedom concern and is covered in greater depth in the Academic Senate's two position papers (Spring 1998 and Fall 1999) on academic freedom.

There are also accreditation standards in this area, from the Accrediting Commission for Community and Junior Colleges. These can be found in the 1996 testimonial policy, "Principles of Good Practice for Electronically Delivered Academic Degree and Certificate Programs" where the Commission states as a principle that:

> ... distance learning is characterized by the same concerns for quality, integrity, and effectiveness that apply to campus-based instruction.

In 1999, a more detailed Commission document on distance learning addressed many of the issues in this paper as it sought to provide expanded assistance to institutions planning distance learning programs and recommended that such programs:

> ... should remain consistent with and central to the stated mission of the institution.

Local academic senates should support the right of individual faculty members to select the technological materials most appropriate for their course. In the case of technology this would include the choice of the best software. This is analogous to a faculty member's selection of appropriate textbooks. Moreover, the broader decisions such as choice of computer platform and other hardware must be made using a process where academic instructional reasons take priority.

AAUP in its "Statement on Distance Education" suggests:

> $ A faculty member engaged in distance education is entitled to academic freedom as a teacher, researcher, and citizen in full accordance with the provisions of the 1940 "Statement of Principles on Academic Freedom and Tenure."
>
> $ Teachers should have the same responsibility for selecting and presenting materials in courses offered through distance education technologies as they have in those offered in traditional classroom settings.

Equipment, Training and Support Services for Faculty

To provide effective instructional use of technology, colleges must provide adequate training and support for faculty and timely support and repair for equipment. This can be addressed in a variety of arenas, such as the college technology plan, staff development plan and instructional equipment process.

Tom Tyner's, "Guidelines for Negotiating Distance Education Issues," suggests possible contract language regarding training and support of faculty:

> $ Technical support will be provided for instructors of all distance education courses, including technicians both on site and at distance sites of interactive courses, freeing instructors to teach most effectively.
>
> $ No faculty shall be assigned to teach a distance learning course that involves learning new technologies without the opportunity to be trained in those technologies. Faculty willingness to teach these courses shall be considered, but program need will be given higher priority.
>
> $ No faculty member shall be assigned to teach a distance learning course using new technologies without adequate prior opportunity to prepare materials required to use those technologies.
>
> $ Faculty members assigned to teach a distance learning course will receive appropriate clerical, logistical, instructional, and technical support.

The California Federation of Teachers' "Framework for Contract Negotiations Related to Instructional Technology Issues," makes the following recommendations on equipment, support and training:

> **Equipment**: When equipment is required for classes, it is desirable that there be sufficient equipment to accommodate the students assigned thereto. The Board and the District are committed to seek funding to provide for the replacement of obsolete equipment, recognizing the necessity for maintaining an adequate inventory of technologically current equipment.
>
> **Support**: Faculty who participate in Distance Learning courses shall be provided logistical, instructional, and technical support. In the event of system failure, the instructor will not be obligated for additional instructional hours beyond the regular schedule. Prior to implementation of the Distance Education program logistical procedures will be addressed and mutually agreed upon.
>
> **Training**: Faculty who agree to participate in Distance Learning courses shall receive appropriate training paid for by the District. Additional training shall be offered where feasible as determined by the District at the request of the bargaining unit member.

In general there is a corresponding need for equipment and support for students, including the provision of adequate computer facilities on campus and the availability of timely technical support for both on-campus and distance students. Many of these details are addressed in the Academic Senate Executive Committee's Spring 2000 document "*Guidelines on Minimum Requirements for College Technology*," which makes specific equipment recommendations. Lastly, AAUP in its "Statement on Distance Education" cautions that responsibility for educational content still belongs to the faculty:

> The institution is responsible for the technological delivery of the course. The teacher, nevertheless, has the final responsibility for the content and presentation of the course.

Instructional Quality Standards - Curriculum and Contact

Quality standards for the curriculum are an area of local academic senate concern. Course approval should follow the standard curriculum committee approval process, and distance education sections in particular are subject to separate review and should follow the recommendations in the Spring 1999 Academic Senate position paper *"Guidelines for Good Practice: Effective Instructor-Student Contact in Distance Learning*":

$ To ensure that the local curriculum committee performs a separate review of courses offered by distance education, as required by Title 5, ' 55378,

$ To ensure that this separate review considers both the information transfer and the instructor-student contact aspects of the course,

$ To ensure that this separate review of instructor-student contact addresses the methods to be used, their effectiveness, and their frequency,

$ To ensure that this separate review considers the availability of technical support for faculty and students,

$ To ensure that this separate review considers issues of access for students with disabilities,

$ To ensure that adequate support services are provided to distance education students, by consulting with counseling and library faculty, and

$ To consult with local bargaining agents on distance education issues that involve working conditions.

For example, in its May 1999 draft position paper, Napa Valley College included an article on TMI standards for instructional quality that has language on curriculum process, contact with students, and technical support.

Also related to quality standards are issues that involve student codes of conduct. AAUP in its December 1999 guidelines for distance education suggests the following policy language:

> Students taking distance-education courses should be held to the same requirements of academic honesty as students taking traditional courses.
>
> The University will ensure that safeguards have been built into the distance-education course format to require that students be held to the same standards of academic honesty as students in traditional courses.

Access Issues

There are many access issues related to technology and education. Of primary interest in this paper is the need to provide adequate equipment and services to ensure faculty access to technology and thereby safeguard faculty academic freedom to teach and research. There is also a corresponding concern for student access.

Access to computers and electronic networks is now an important component of research, publication, and teaching. This access and communication is largely controlled by an institution's computer/electronic use policy. A disturbing feature of many institutional electronic use policies is the suggestion that the right to computer access has a low priority - lower, for example, than the right of access to the library. Computer access is often portrayed as a privilege that may be suspended or terminated for perceived violations of use policy.

In its foundations paper *"Academic Freedom, Privacy, Copyright and Fair Use in a Technological World,"* the Academic Senate recommended that local academic senates include language in college policies or contracts to ensure:

> that local electronic/computer use policies guarantee appropriate access to computers and networks for faculty and students.

The following sample language appears in the Academic Senate Executive Committee's Spring 2000 document *"Guidelines on Minimum Requirements for College Technology."*

- $ Every full-time faculty member should have an appropriate computer on his/her desk. The choice of platform is an academic and professional decision.
- $ Every part-time faculty member should have adequate access to computers.
- $ Every computer should be connected to the college network.
- $ Every computer should have high speed Internet access and current browser software.
- $ Every full-time and part-time faculty member should have an e-mail address/account accessible from both on and off campus.

"*Guidelines on Minimum Requirements for College Technology*," also describes other access issues including general student access to on-campus and distance-learning technology.

Students should have access to the following:

- $ Computers for on campus computer instruction;
- $ Computers for on campus technology mediated instruction;
- $ Computers for computer assignments from any class;
- $ Computers for Internet assignments and research from any class;
- $ Computers for e-mail communication to instructors;

(either free on campus e-mail and Internet, or optional off campus access at a reasonable cost);

- $ Computers for access to library catalog system;
- $ Library orientation in the use of technology in library research; and
- $ Technical support for student on campus users.

In addition, with reference to access, college policies must guard against any disproportionate impact on underrepresented and economically disadvantaged populations and must also accommodate the needs of students with disabilities. For a definitive study of this second issue see the California Community College Chancellor's Office 1999 document, "Distance Education: Access Guidelines for Students with Disabilities."

Library Technology

There are many technology issues that are specific to the library and to discussions of information competency. A fuller discussion of these must await a future paper. However, there are also several library issues that relate to those already discussed in this paper.

The AAUP document, "Academic Freedom and Electronic Communications" comments that restrictions on printed library material are highly unusual and that restrictions on library computer access should meet comparable standards. Theoretical perceptions of possible abuse should not drive the creation of library computer use policies. For example, filtering or blocking technology can easily violate academic freedom by censoring access to some sites. Computer use policies need to be written with maximum protection of access firmly in mind.

The California Federation of Teachers, in the draft "Framework for Contract Negotiations Related to Instructional Technology Issues" recommends that contracts include language to assure faculty primacy in assessing the benefits and costs of library technology.

The Academic Senate's Spring 1998 position paper, *"Information Competency in the California Community Colleges,"* makes several references to the issues of academic freedom, privacy and legal concerns raised by the growth of digital information. The paper states that:

> Information competency is the ability to find, evaluate, use and communicate information in all its various formats. It combines aspects of library literacy, research methods and technological literacy. Information competency includes consideration of the ethical and legal implications of information and requires the application of both critical thinking and communication skills.

Other areas of concern to library faculty may include the replacement of paper databases and journals with electronically published versions and the need to educate students in how to judge the value of material that is placed on a website without undergoing any review or evaluation process. The ease with which electronic material may be plagiarized is also an area of concern for student codes of conduct.

Counseling Technology

The counseling area also raises many unique issues around technology. As with the library, these could be the subject of a future paper, and the present discussion will be confined to ideas already discussed in this paper.

In the area of confidentiality, an even higher standard is required when technology is used in student advising.

Under the 1974 federal Family Educational Rights and Privacy Act (FERPA), colleges are required to protect the confidentiality of basic student records and data. Even more important is to protect the confidentiality of faculty-student communication and counselor-student advising as described in the ethical standards for counselors laid out in the American Counseling Association Code of Ethics and Standards of Practice (1997), which states:

> Respect for Privacy. Counselors respect their clients' right to privacy and avoid illegal and unwarranted disclosures of confidential information.

One possible solution to the privacy issue for counselors is simply to not use technology for any privileged communication with students-especially since the role of the community college counselor includes academic, career, and personal counseling. However, this approach excludes the provision of possible new benefits for students. The Spring 1997 Academic Senate position paper, *"Standards of Practice for California Community College Counseling Programs,"* recommends the introduction of appropriate technology with effective safeguards:

> $ Counseling programs should select only those technologies which enhance the delivery of services to students. Electronic access to student educational plans, articulation information, transcripts, petitions, and the like should be encouraged.
>
> $ Counseling programs should use technologies to enhance communication within the counseling department, as well as to the college and to the community.
>
> $ Policies and procedures to maximize technology use and access, while ensuring safety of records and appropriate confidentiality, should be developed and implemented.

Finally, the California Federation of Teachers, in the draft, "Framework for Contract Negotiations Related to Instructional Technology Issues," recommends that contracts include language to assure faculty primacy in assessing the benefits and costs of technology used for academic counseling.

ISSUES OF INTELLECTUAL PROPERTY RIGHTS AND COMPENSATION

Intellectual Property Rights is another area of hot debate. The Academic Senate paper "*Academic Freedom, Privacy, Copyright and Fair Use in a Technological World*," discussed the foundations of this area and included a thought provoking section which raised the possibility of faculty simply creating material for the greater good. For faculty who wish to protect their intellectual endeavors, this section examines some possible language.

A good resource is the AAUP December 1999 report, "Suggestions and Guidelines: Sample Language for Institutional Policies and Contract Language - Ownership of Intellectual Property."

As the National Education Association Technology Brief "Distance Education: Challenges and Opportunities" states:

> As the financial stakes are raised, intellectual property rights and faculty rights increasingly become intertwined. Institutions that previously asserted no ownership claim to a scholarly book are rethinking their policies on intellectual property rights.

Whether faculty members wish to create material that is distributed free on the world wide web or wish to create courses that are marketed like textbooks, there is a need for clear policies regarding course development, ownership of electronic courses, and recording and distribution rights for future use.

This section will examine the following issues:

- $ Course Development
- $ Ownership of Electronic Courses
- $ Future Use of Material

Course Development

To facilitate the development of high quality online courses, there is a need for release time and support. For example, in their May 1999 draft position paper, Napa Valley College (NVC) included the following language to provide support in the three areas of course development, implementation, and evaluation:

> Support for Development of Courses
>
> NVC shall provide reassigned time (or a stipend equal thereto) for the initial development of a course that the faculty member will teach in the TMI mode. The reassigned time (or stipend) shall be equal to the load credit for the course and shall be provided the semester prior to that during which the course will be offered.
>
> Support for Implementation of Courses

NVC shall provide reassigned time (or a stipend equal thereto) for the initial implementation of a course that the faculty member will teach in the TMI mode. The reassigned time (or stipend) shall be equal to the load credit for the course and shall be provided the semester in which the course is offered.

Support for Evaluation of Courses

NVC shall provide reassigned time (or a stipend equal thereto) for the initial evaluation (and possible revision) of a course that the faculty member has taught in the TMI mode. The reassigned time (or stipend) shall be equal to the load credit for the course and shall be provided the semester following that when the course was offered.

The provision of reassigned time may affect ownership of material or create a "work for hire" as discussed in the next section.

Ownership of Electronic Courses

A central debate in the technology area is author rights versus "work-for-hire" material which affects both course development and rights for future use. This section presents some specific policy or contract language to address concerns of the Academic Senate. For a more detailed description of copyright, fair use and work-for hire provisions see the Academic Senate's 1999, "*Academic Freedom, Privacy, Copyright and Fair Use in a Technological World.*"

Many four-year institutions have long-standing agreements on intellectual property rights, but this practice is less common in the community college system. For example, the California State University (CSU) Memorandum of Understanding with the California Faculty Association states:

> Faculty bargaining unit employees may use for non-CSU purposes materials created by them without extraordinary University support, if in the past the CSU has never disputed the use of such materials by faculty bargaining unit employees for non-CSU purposes. Such works may include, but shall not necessarily be limited to, lecture notes and materials, course syllabi, instructional text and manuscripts, software, or plans, patterns and works of art or design. Unless there is a separate individual agreement or past practice at a campus to the contrary, faculty bargaining unit employees shall be entitled to grant licenses or make assignments with respect to such materials to publishers and publishing agents or any other third party.

The ownership of online course material is often the point at which intellectual property rights becomes a more pressing issue than it has been with traditional courses. In a December 1999 *Chronicle of Higher Education* article, Dan Carnevale and Jefferey Young provide a selection of recent examples of conflicts and solutions in this area.

At one end of the spectrum are institutions that continue the traditions of faculty textbook authorship in which the faculty member owns it. This position is likely to provide incentives that promote the development of courses.

An example of language in this vein comes from the May 1999 draft position paper from Napa Valley College:

> Intellectual Property Rights
>
> All materials developed by a faculty member for use in TMI instruction, counseling, or library service are the property of that faculty member. The dissemination and control of those materials shall be at the sole and complete discretion of that faculty member.

At the opposite extreme are institutions that use the definitions of the 1976 Copyright Act and the concept of a "work for hire" to assert the employer's legal "authorship" of the work. Some colleges claim that the college owns course material if any college resources are used in the development. It has been reported that some colleges have tried to extend this argument to claim that the provision of summer health benefits to faculty means that they own any material produced in the summer. Such a position is likely to result in the refusal of faculty to develop material and is certainly not in the best interests of students.

As a result, many colleges have developed compromise language that shares resources and ownership.

For example, the draft, "Framework for Contract Negotiations Related to Instructional Technology Issues," produced by the California Federation of Teachers includes the following definitions of support:

> $ District Support includes the use of district funds, personnel, facilities, equipment, materials, or technology. District Support may be either Nominal or Substantial Resources, or a combination thereof. Grant funds obtained at the initiative of, and through the efforts of, the Faculty Member(s) who create a Work or Invention shall not be considered District Support.
>
> $ Nominal Resources include those which are customarily available or provided in the course of the Faculty Member's usual appointment or assignment, such as (but not limited to) support services provided by other employees, the use of computers, photocopy machines, office supplies, and the use of an assigned office and telephone. A budget which is customarily provided for the Faculty Member's usual appointment or assignment shall be considered a Nominal Resource.

$ Substantial Resources shall be direct costs to the District, and include the provision of a budget in excess of $ [place amount here], over and above any budget customarily provided for the Faculty Member's usual appointment or assignment. The assignment by the District of other employees to provide secretarial, technical or creative services specifically for the creation of the Work or Invention shall be considered Substantial Resources if the salary costs for those services exceed $ [place amount here]. The use of exceptionally expensive District equipment or facilities (e.g., professional recording and filming studios, and professional television cameras) are Substantial Resources. Indirect costs shall not be considered Substantial Resources.

The Foothill-De Anza Community College District has the following contract language in this area:

39.1 This article seeks to protect and promote the traditional academic freedom of the District's faculty in matters of publication and to balance the rights of faculty and the District reasonably and fairly.

39.2 The right to claim the copyright shall be as follows:

39.2.1 The faculty member may claim the right to copyright material if it was created outside the course of the faculty member's employment with the District. If the faculty member uses District equipment or supplies but creates the work on his or her own time, the faculty member shall retain the right to copyright the material without cost. Copyright on materials unrelated to the faculty member's employment with the District shall belong solely to the faculty member.

39.2.2 The District may claim the right to copyright material if the project was commissioned by the District, if the project is "work for hire" (i.e., the work was created by the faculty member within his or her course of employment), or the work is an institutional effort.

39.2.3 The District and faculty member may share the right to copyright material if the work is created under circumstances in which the faculty member contributes his or her time outside the normal course of employment and the District contributes services, staff, and/or financial resources, or under other circumstances not outlined in Subsections 39.2.1 and 39.2.2 above.

39.2.4 If a separate agreement is entered into between the District and faculty member(s) for a specific project, the right to claim copyright ownership shall be governed by the terms of the specific agreement.

> Responsibility for registration of copyright shall lie with the owner of the copyright.
>
> 39.3 Royalty distribution rights shall parallel ownership in copyright.

More specific written agreements may be useful in cases of joint development and ownership. In its December 1999, "Suggestions and Guidelines: Sample Language for Institutional Policies and Contract Language - Ownership of Intellectual Property," the AAUP, provides the following sample language:

> The institution can exercise joint ownership under this clause when it has contributed specialized services and facilities to the production of the work that goes beyond what is traditionally provided to faculty members generally in the preparation of their course materials. Such arrangement is to be agreed to in writing, in advance, and in full conformance with other provisions of this agreement.
>
> Funds received by the faculty member and the college or university from the sale of intellectual property owned jointly by the faculty member and the college or University shall be allocated and expended in accordance with the specific agreement herein provided: [must be negotiated by the parties.]

Possible options to consider in writing such an agreement might include faculty ownership after reimbursement of costs to District, or faculty ownership after the District has recovered costs from sales or royalties.

Future Use of Material

A particular area where the interpretation of intellectual property rights is often in question involves future use, recording and rebroadcast rights, and the issue of what happens to an online course if the original faculty developer moves to another institution.

The Academic Senate paper, *"Academic Freedom, Privacy, Copyright and Fair Use in a Technological World,"* stated:

> Historically, there has been an understanding among teachers: their syllabus and the course materials that they generate are their own. It is also understood that the course outline of record, on file at the college, belongs to the college, though departmental staff is usually responsible for generating and updating it. In the days of dittos and mimeographed handouts, this understanding, vague as it might be, was perhaps sufficient. With the advent and exponential growth of current technologies from e-mail to online courses, multimedia

course materials, and computing work as part of interactive education, the old understanding is seriously deficient.

The AAUP in its "Statement on Distance Education" suggests:

> Provision should also be made for the original teacher-creator, the teacher-adapter, or an appropriate faculty body to exercise control over the future use and distribution of recorded instructional material and to determine whether the material should be revised or withdrawn from use.
>
> A teacher's course presentation should not be recorded without the teacher's prior knowledge and consent. Recordings of course material are academic documents, and, thus, as with other works of scholarship, should have their author or creator cited accordingly.

The Foothill-De Anza Community College District has the following contract language in this area:

> 39. 4 If the District wishes to videotape, broadcast or televise any classroom, laboratory, or other instructional activity, it shall first obtain permission of the faculty member. Before the District may enter into an agreement for commercial redistribution of videotaped, broadcast or televised instructional activity performed by a faculty member as part of his or her employment with the District, the District shall first obtain the written permission of the faculty member. All profits from such commercial redistribution shall be held by the District.

Notice that the above language assigns profits to the district. Sample language more advantageous to the faculty member is found in Tom Tyner's "Guidelines for Negotiating Distance Education Issues":

> Employer may transmit or record for transmission any classroom instruction, lecture, or other instructional or performance event produced by faculty members as a part of a program of distance learning, where the faculty member has received either an equivalent reduction in other classroom assignments or overload compensation. The employer, however, may not sell or re-transmit in future semesters any such recording except under the terms of a written agreement between the employer and faculty member providing each party with a 50 percent interest in net profits from either the sale or rebroadcast.

It is also possible to provide for works where the faculty member has been specifically compensated for producing material - the classic "work for hire" of copyright law. Again, Tyner's "Guidelines for Negotiating Distance Education Issues" suggest sample language:

> The college is the presumed owner of intellectual property when it enters into an agreement with the faculty member specifically to create such specified intellectual property in exchange for compensation and/or released time as mutually agreed upon by the college and faculty member.

ISSUES OF WORKLOAD AND COMPENSATION

Workload and compensation is clearly an area where collective bargaining language is a likely vehicle for protection. However, many areas are also appropriate for inclusion in local academic senate policies.

The following issues are examined in this section:

- $ Class Size
- $ Workload
- $ Evaluation of Distance Courses
- $ Contracting Out

Class Size

Class size is the classic example of an area that involves both working conditions and instruction because of its effect on both instructor load and quality of instruction. Many colleges have a default mode where technology-mediated or distance classes are held to the same size as the standard on-campus class. In the Academic Senate paper, "*Guidelines for Good Practice: Effective Instructor-Student Contact in Distance Learning*," it is recommended that class size be one of the specific areas included in curriculum committee scrutiny of distance education courses. Title 5 ' 55352 permits this. Title 5 ' 55378 requires that distance education courses undergo a separate review and approval by the curriculum committee.

Title 5 ' 55352 requires that "the number of students assigned to any one course section offered by distance education shall be determined by and be consistent with district procedures related to faculty assignments." To implement this, Tyner's "Guidelines for Negotiating Distance Education Issues" suggest the following sample language:

> The number of students assigned to any one distance education course section shall be consistent with the class size maximum set for the regular course sections in that discipline.
>
> In the absence of an established class size maximum for a given course, the determination of the number of students assigned to a distance education course section shall be guided by what class size best contributes to educational quality and a reasonable faculty workload.

Colleges might develop a policy to share responsibility for class size by, for example, setting class size parameters in the contract and having the curriculum committee ensure that instructional methods are appropriate for the selected class size.

Workload

More general workload issues involve such ideas as preparation time, online office hours, and other student contact methods including any possible "on-campus" requirement for instructors. In general, research has shown that despite vague promises of large cost savings through the use of technology, distance education courses with effective instructor-student contact require more faculty time than corresponding lecture courses. In her August 1998 article, "How Many Students are 'Just Right' in a Web Course?," Judith Boettcher, director of the Corporation for Research and Educational Networking, cites examples of distance education courses that have been accepted as effective and where the maximum class sizes are in the 15- to 20-student range. She also cites the growing evidence that faculty spend more time than in a traditional course when they interact via e-mail or the web. A follow-up article, "Cyber Course Size: Pedagogy and Politics," appeared in April 1999. For many colleges, the starting point for instructor load assigned to TMI or distance classes is again a default value of the load assigned to the corresponding classroom based course. For example, the May 1999 draft position paper from Napa Valley College states:

> Load credit for a TMI course shall be the same as for the class presented using traditional methods.

For others, the starting point is that distance education classes actually involve more preparation than traditional classes and that both additional preparation and additional students must be acknowledged. The AAUP's December 1997 AReport on Distance Learning" makes the following recommendations:

> 1. Enrollment. Faculty who have substantial additional student enrollment in a course section due to distance learning should be compensated by additional credit in load assignment. Those students enrolled as distant learning students should be considered to be an additional class section, relative to the size of the original class, for the purpose of load.
>
> 2. Preparation. Faculty who teach in distance learning programs should be additionally compensated for the extra time required to prepare for distance learning courses, particularly those transmitted by interactive television. This compensation should be financial or, preferably, in order to promote quality, in the form of credit toward load assignment.

Tyner's "Guidelines for Negotiating Distance Education Issues" suggest the following sample language to account for the extra faculty work:

> $ Instructors teaching interactive distance education courses shall receive one additional LHE (lecture hour equivalent) for each 3 LHE's taught. (For example, an instructor teaching a three-unit interactive course will receive 4 LHE's of teaching credit.)
>
> $ An instructor developing a district-approved distance education course shall receive 3 LHE's released time during the semester the course is developed, or the paid equivalent of 3 LHE's if developed during summer break.
>
> $ A faculty member teaching a distance learning course for the first time, which requires substantial time and effort to learn new technologies and/or develop or adapt new materials, will be awarded additional LHE's up to twice the number given for a regular course.

Office hour requirements are covered in the May 1999 draft position paper from Napa Valley College as follows:

> Office Hours
> TMI courses carry the same office hour requirement as traditional courses. However, with the agreement of the Division Chair or Dean, the faculty member may hold office hours for a TMI course via e-mail, which may be from a remote location.

Notice in this language the explicit acknowledgment that office hours may be conducted from a remote location. This relates to a larger issue regarding what is an appropriate on-campus presence for faculty who teach a substantial portion of their load in a distance mode. The 1998 change to Title 5 ' 55376 regarding instructor student contact in distance education removed any requirement for "face-to-face" contact and now requires "regular effective contact." This change should be reflected in any guidelines regarding on-campus presence.

Evaluation of Distance Courses

The success of technology-mediated or distance learning courses should be evaluated using the regular course and program review processes of the institution.

Evaluation of faculty members who teach such courses should correspondingly use the regular faculty evaluation process. Some parts of the process may have to be modified to account for distance classes. Such items as the traditional peer classroom observation could, with agreement, be replaced by observation of selected e-mails, websites or other activities that constitute the

"regular effective contact" with students. Student evaluations of the instructor should be possible in the normal way.

Contracting Out of Instruction

In addition to general faculty job protection described on page 8 in the "Instructor Hiring and Assignment to Courses" section, some colleges address issues regarding delivery or reception of distance education courses by other institutions. For example, Tyner's "Guidelines for Negotiating Distance Education Issues" suggests language which prohibits the elimination of a locally offered course where the substitution of a distance course from another institution would supplant the local instructor:

> Reception of a distance education course transmitted by another institution is prohibited if the course is currently being taught and/or listed in the college catalogue.

Notice, of course, that many colleges receive transmitted material to conduct their own course, with their own instructor.

A broader selection of examples is included in the draft, "Framework for Contract Negotiations Related to Instructional Technology Issues," produced by the California Federation of Teachers:

> $ No work normally performed by any member of the faculty bargaining unit shall be contracted out without the express agreement of the bargaining agent.
>
> $ No distance education sections shall be instructed or conducted by persons not employed within the faculty bargaining unit.
>
> $ No distance education or technology-related work shall be performed by other than members of this bargaining unit.
>
> $ Courses outside the capabilities of bargaining unit members, such as prepackaged courses or courses available through membership in educational consortia, must be approved by the appropriate department and the appropriate Committees before they can be included in a college catalog or incorporated into a program of study.

Related to this is the discussion of "anytime, anywhere home delivery." This phrase has been used to describe the potential of various technology grant projects in California, such as the satellite uplink facility at Palomar College and the California Virtual College. The implication is that in a short number of years the technology will exist to originate a course at any community college in the state and beam it directly into the student's home. While such technology has the potential to deliver education to students who are otherwise unable to receive it, tremendous

questions are raised regarding the effect of such a policy on the current campus based attendance and apportionment funding mechanisms for the whole system. Open system discussion of this issue has not yet taken place.

CONCLUSION AND RECOMMENDATIONS FOR LOCAL ACADEMIC SENATES

In conclusion, the Academic Senate believes that there are many issues where technology has a profound impact on the educational experience of our students. From a faculty perspective, these issues occur in overlapping areas of academic policy and working conditions. The Academic Senate therefore encourages faculty and local academic senates to discuss these issues in the setting of their own college and to put in place academic policy language or collective bargaining contract language to address them in the most appropriate manner for their institution.

The Academic Senate makes the following recommendations to local academic senates:

1. Local academic senates should consult collegially and take a leading role in the development of college educational master plans; local senates should ensure that such plans address technology mediated instruction and distance learning, both of which may have an impact upon facilities master plans.

2. Since both technology mediated instruction and distance learning are academic and professional matters, local academic senates should take the lead in working with colleges and districts to establish definitions of technology mediated instruction and of distance learning that are incorporated in educational master plans.
3. Local senates should consult collegially in establishing parameters derived from definitions of technology mediated instruction and distance learning, as well as formulating criteria that can be applied to instruction to determine where and when such definitions apply.

4. Local senates should monitor the impact of technology mediated instruction and distance learning on curriculum and may wish to assign such monitoring activities to the curriculum committee.

5. Local senates should collaborate with appropriate local collective bargaining agents to secure policy or support contract language regarding issues that may affect work load, compensation, assignments, and policies governing privacy and intellectual property rights.

6. Local senates should consult collegially to develop electronic use and e-mail privacy policies that are no more restrictive to freedom of expression and academic freedom than are policies governing printed and oral communications, usages, and contents. Such policies should explicitly address and reaffirm academic freedom throughout the spectrum of the electronic medium, including e-mail, websites, and online instruction, counseling, research, and communication.

7. Local senates should collaborate with the appropriate local collective bargaining agents to secure policy or support contract language ensuring that instructor hiring, class assignments, and responsibilities for teaching remain the same in the arena of technology mediated instruction and distance learning as they are in traditional campus-based in-classroom courses. There should be an appropriate balance of curriculum, discipline and student needs.

8. Since technology mediated instruction and distance learning courses require equipment and technological and technical support, local senates should consult collegially to develop policies and institutional commitments that adequately and appropriately support such instructional activities.

9. Local senates need to be sure that the curriculum committee fulfills its duties in reviewing distance education courses as specified in Title 5 ' 55378.

10. All issues of access require local senates to consult collegially with the college and district, including instructor access to computers and networks, student access to technology mediated instruction and distance learning, and access of the disabled to online and all distance-learning courses.

11. Local senates should consult collegially with colleges to ensure that Library electronic access, including access to the Internet and websites, is no more restrictive than is access to the printed word.

12. Local senates need to consult collegially with colleges to secure the same level of confidentially for all aspects of electronic advising that are recognized as necessary for traditional counseling modalities.

13. Local senates should collaborate with the appropriate collective bargaining agents to secure policy or support contract language ensuring that evaluation of electronic instruction and of instructors engaged in such instruction conforms to classroom instruction evaluation and non-classroom teaching evaluation.

14. Where materials are developed by an instructor for technology mediated instruction and/or distance learning, local senates should collaborate with the appropriate collective bargaining agents to secure policy or support contract language ensuring that ownership of such instructor-developed materials remain with the instructor, in line with current practice regarding traditional course materials, hand-outs, and textbooks.

15. With the appropriate collective bargaining agents, local senates should develop policies or support contract language that ensures agreement and appropriate delineation of copyright, ownership rights, and future use rights between the originating faculty member and the college.

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16. Local senates need to collaborate with the appropriate collective bargaining agents to support contract language that fully and adequately covers all issues of workload and compensation surrounding technology mediated instruction and distance learning.

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